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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, ~~1952~~ 1953

No. ~~8~~ 1

OLIVER BROWN, MRS. RICHARD LAWTON, MRS.
SADIE EMMANUEL, ET AL., APPELLANTS,

vs.

BOARD OF EDUCATION OF TOPEKA, SHAWNEE
COUNTY, KANSAS, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF KANSAS

FILED NOVEMBER 19, 1951

Probable jurisdiction noted June 9, 1952

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Mr. Goodell: Yes.

Judge Mellott: What is the next exhibit number, Mr. Clerk?

The Clerk: "N".

Judge Mellott: "N". Let it be admitted as Defendants' Exhibit "N".

[fol. 182] Defendants' Exhibit "N", having been offered and received in evidence, is contained in the case file.

HUGH W. SPEER, having been first duly sworn, assumed the stand and testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Will you please tell the Court your name.

A. Hugh W. Speer.

Q. And what is your occupation?

A. I am chairman of the Department of Education at the University of Kansas City.

Q. Have you ever been in public school work, Mr. Speer?

A. Yes, I was in public school work in Kansas for about twelve years.

Q. You mentioned the Department of Education, University of Kansas City, what is the function of the Department of Education?

A. Our chief function at the present time is the training of elementary school teachers.

Q. Do you train teachers eligible to teach in Kansas?

A. Yes, and a number of them do.

Q. How many members are on the teaching staff of your Education Department under your supervision?

[fol. 183] A. At the present about twenty.

Q. Do you have any other responsibilities at your university?

A. Well, I am a member of the President's Advisory Committee; I am chairman of the Curriculum Committee of the university.

Q. Do you regularly come into contact with elementary schools?

A. Yes, we conduct an elementary school of our own. We call it the demonstration school in the summer. We do practice teaching in the public schools in our locality, which means we are in and out of the schools constantly.

Q. Would you tell us something of your educational background, Dr. Speer; where did you attend public school?

A. Attended public schools at Olathe, Kansas.

Q. And what universities did you attend and what degrees do you hold?

A. I hold a Bachelor's Degree from American University in Washington, D. C., a Master's Degree from George Washington University, and a Ph.D. Degree from the University of Chicago.

Q. What was your major field in your doctorate?

A. Evaluation.

Q. Would you please explain to the Court what evaluation means.

A. Evaluation is a rather general term. We sometimes evaluate educational programs or buildings or the behavior changes that are produced in children as a result of educational programs.

Q. Do you belong to any professional organizations, Dr. Speer?

A. I am a key member of the National Education Association, a member of the Missouri State Teachers Association, a member of the National Vocational Guidance Association; that is about it.

Q. Do you hold any honors or scholarships?

A. I have recently been granted a Fulbright scholarship by the United States Department of State to lecture on education in Iran.

Q. What will be the purpose of your visit in Iran?

A. I will work through the University of Tehran to help improve the school system of Iran.

Q. Dr. Speer, have you ever made an examination of the elementary schools of Topeka?

A. Yes.

Q. When?

A. During the last month.

Q. Why did you make this examination, Dr. Speer?

A. At the request of counsel for plaintiffs.

Q. What aspects of the schools did you examine during your examination?

A. We examined the more important aspects that we thought had a bearing on the major issues in this case. We [fol. 185] have examined the buildings, the curriculum, the equipment, the library, the preparation and experience of the teaching staff and the salaries, the class loads, the size of classes and a few other minor points.

Q. Now, I am going to ask you some questions about your findings. What did you find concerning the comparison of teachers in the colored schools with those of the white schools?

A. I found only minor differences between the two groups, and these differences tend to balance each other. For example, in preparation, all the colored teachers have Bachelor's degree and all but 15% of the white teachers have Bachelor's degrees. On the other hand, in terms of Master's degrees, 12% of the colored teachers have Master's degree and 15% of the white teachers hold Master's degrees. The colored teachers average twenty years of experience, and the white teachers nineteen years.

Q. Dr. Speer, what did you find concerning class size and teaching load; would you explain to the Court what teaching load is?

A. Teaching load is the number of pupils which the teacher has each day and, again, here I found not much difference. There is some difference at the kindergarden level where the colored kindergartens are somewhat smaller. I think the white average is 42; the colored average about 25. But, in grades 1 to 6, the average is very close together; 34 in the white schools and 32 in the colored schools. Again, I would say, I found no significant difference in teacher load or teacher preparation.

Q. In examining the two sets of schools, negro and white, did you find any provisions for special rooms in any of these?

A. I found provision for two special rooms for white children; I found no provision for special rooms for any colored children.

Q. Now, did you study all of the school buildings in Topeka, Dr. Speer?

A. Yes, we examined data in the Board of Education files on all school buildings, and we personally visited, Dr. Buchanan and I and some of my other assistants, we visited about two-thirds of the schools in the city.

Judge Hill: If counsel will let me interrupt, what do you mean by special rooms?

Mr. Greenberg: Well, if I may explain, in the white schools there are rooms for specially retarded or handicapped children, whereas in the negro schools there are none.

Judge Hill: Very well.

By Mr. Greenberg:

Q. Did you examine these schools with regard to their age and their insured value?

A. Yes. We—

[fol. 187] Judge Huxman: With regard to what?

Mr. Greenberg: Regard to their age and insured value.

The Witness: On the revised list furnished by the Board of Education we secured the ages of the buildings and also from the insured values of buildings, as provided by the Board of Education, in the exhibits, we made a study of the current values in terms of the insured values.

By Mr. Greenberg:

Q. Why did you use insurance value rather than construction cost, Dr. Speer?

A. Construction cost back over the sixty-year period dates these buildings would vary a great deal which is obvious. Therefore, we could not make comparisons on construction cost; but we assumed that the Board of Education and their insurance companies have arrived accurately at the current value of buildings, and that those values are reflected in the insurance figures furnished by the board.

Q. Is the total insurance value—does the total insurance value of the building reflect accurately the value of the building as broken down into instructional units?

Mr. Goodell: We object to this testimony from this witness. There is no foundation laid for his expert knowledge about evaluating of physical property. The testimony

[fol. 188] shows he is an educator, that is true. That is in the field of engineering and architects.

Judge Huxman: The question presupposes a knowledge he might not have because sometimes you only insure a building for three-fourths of its value and others may be insured for 100%.

Mr. Goodell: Plus the additional reason for the objection is that it stands admitted the physical value of the physical plants on two exhibits.

Judge Huxman: We will let the witness answer.

Mr. Greenberg: May I ask him whether or not, as an educational expert he has been trained in evaluating the physical plants of buildings?

Judge Huxman: On the basis of insurance?

Mr. Greenberg: On the basis of insurance.

Judge Huxman: Mr. Counsel, here's the difficulty with that question: Suppose it is the policy of the board to insure Buildings for 25% of their—75%—

Mr. Greenberg: I intend to bring out an explanation of that particular factor.

Judge Huxman: You don't know the basic of the insurance.

Mr. Greenberg: They insure on the basis of 80%, Your Honor, and I intend to bring that out.

[fol. 189] Judge Hill: That would be hearsay from this witness, wouldn't it?

Mr. Greenberg: It has been admitted in evidence by stipulation.

Judge Hill: All right.

Judge Huxman: They are insured at 80% of their value, is that in the stipulation?

Mr. Greenberg: Your printed sheet of insurance values of each building; the one you have right there.

Mr. Goodell: No, that doesn't mean that. We have got an insurance clause that 80% on total loss is paid; that is the type of insurance, but that doesn't mean that their insurability of the buildings is limited to 80%.

Judge Huxman: I think the objection to the question will be sustained.

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By Mr. Greenberg:

Q. Dr. Speer, in making your evaluation, did you take into account the fact that some buildings might have had some unused classrooms?

A. Yes.

Q. What significance did you ascribe to that fact?

A. Well, an unused classroom is very limited value to the school. We assume that as most schools operate one class with one teacher, can profitably use one classroom.

[fol. 190] Q. Now, did you conduct a visual inspection of any of the buildings in Topeka as well as inspecting the records which you have indicated?

A. Yes, we did.

Q. How many schools did you inspect visually?

A. We inspected I think it was fourteen directly.

Q. And what criteria did you use to determine which schools you would evaluate merely on the basis of the records and which schools you would evaluate by a personal visit?

A. We first examined the records on all of them, and then, in order to substantiate our findings, we thought we should visit at least a representative sample and we visited in all two-thirds of them, making sure we got the older buildings and the newer buildings and some of the medium-aged buildings so that we would have a representation of the complete range.

Q. What criteria did you use in your visit?

A. We used the usual criteria that are recognized in this area, such as sight, the nature of the structure, the plan of the building, the classrooms, the service rooms, the kindergartens, library books, the supplies, the safety features, the maintenance features. I might add these are the kind of features that are included by such authorities as Holly and Arnold in their scorecard for elementary school [fol. 191] buildings. Dr. Holly is from the Ohio State University and Dr. Arnold is from the University of Pennsylvania.

Mr. Goodell: We object to this as hearsay, about what some book says about evaluation.

Judge Huxman: He is testifying as to the basis of his

knowledge of works on this. I think it's competent. This is an expert witness. He may testify.

Judge Mellott: There seems to be no unanswered question.

By Mr. Greenberg:

Q. In order to save the time of the Court, Dr. Speer, did you make any general observations that seemed to apply to all of the buildings you visited?

A. Yes, I think I can. First of all, in regard to gymnasiums and auditoriums, the facilities, all in all, seemed to be about equal between the colored schools and the white schools. Three-fourths of the colored schools have a combined gymnasium-auditorium, and we would say approximately that proportion of the white schools have similar facilities. However, I should add that none of the colored schools have anything like the luxurious facilities that we would find in the Oakland building or the State Street building or the Gage Building, for example.

Q. How do the various—

A. I might, if I may—

Q. Go ahead.

[fol. 192] A. —add one or two other general observations to save time. The buildings are all well kept, well preserved, and I think well maintained. Dr. Buchanan and I felt that that was equal throughout the system.

Q. How do the buildings compare as to their ages, Dr. Speer?

A. The ages of the white buildings average twenty-seven years, according to the figures furnished by the board, and the ages of the colored buildings thirty-three years. In other words, the white buildings average six years newer. However, I think we should add another feature here. Inasmuch as the newer buildings tend to be larger, we found this to be the case, that according to last year's enrollment figures, 45% of the white children attend schools that were newer than the newest colored buildings, whereas 14% of the white children attended schools that were older than the oldest colored building. To state another kind of a comparison, 66%, or two-thirds, of all white children attend schools that are newer than the average age of the colored buildings.

Q. Dr. Speer, how do the colored schools compare to the

white schools in regard to the insured value per available classroom?

A. The average for the white schools is \$10,517, and the average for the colored schools is \$6,317. Or, stated another way, the insured value per available classroom is 66% [fol. 193] higher in the white schools.

Q. Dr. Speer, did you examine the curriculum in the schools in the City of Topeka?

A. Yes.

Q. Tell the Court what you mean by "curriculum", also.

A. By "curriculum" we mean something more than the course of study. As commonly defined and accepted now, "curriculum" means the total school experience of the child. Now, when it comes to the mere prescription of the course of study, we found no significant difference. But, when it comes to the total school experience of the child, there are some differences. In other words, we consider that education is more than just remembering something. It is concerned with a child's total development, his personality, his personal and social adjustment. Therefore it becomes the obligation of the school to provide the kind of an environment in which the child can learn knowledge and skills such as the three "R's" and also social skills and social attitudes and appreciations and interests, and these considerations are all now part of the curriculum.

Q. I see, Dr. Speer. Do you have anything further to say?

A. Yes. And we might add the more heterogeneous the group in which the children participate, the better *than* can function in our multi-cultural and multi-group society. For example, if the colored children are denied the experience [fol. 194] in school of associating with white children, who represent 90% of our national society in which these colored children must live, then the colored child's curriculum is being greatly curtailed. The Topeka curriculum or any school curriculum cannot be equal under segregation.

Q. Dr. Speer, I would like to go through these—through the school system rather rapidly now school by school and have you point out key characteristics you found as to each school.

What did you find concerning the Buchanan School in regard to these?

A. The Buchanan School is thirty years old; the insurance

value per available classroom is \$5,623. It has five rooms, all of which are in use, including a double room divided with sliding doors that is used for an auditorium and also for a playroom. The furniture is quite old, reflecting the age of the building. The site and playground is only fairly adequate. The books in the building are generally old and in poor condition. Many titles date back to the 1920's and even some before 1920.

Q. What did you find concerning Gage School, Dr. Speer?

A. The Gage School, a white school, is twenty-three years old and has an insured value per classroom of a little more — of \$9,136. It has fifteen classrooms all in use. The building is more crowded than most, although the classes run [fol. 195] about average for the system. It has a good auditorium with—it's combination—it has a kitchenette that adjoins the auditorium and has an attractive kindergarten room with murals, toilet facilities and a fireplace; and also it has some old titles among the books, but a fair proportion of the books in this building are of a newer and better — than we found elsewhere. It has a very excellent and spacious playground.

Q. Concerning Lafayette School, Dr. Speer.

A. Lafayette is forty-eight years old, has an insurance value per classroom of \$3,373.

Mr. Goodell: While he is making his testimony, would it be better if he designates which are the white schools.

Mr. Greenberg: Dr. Speer, when you describe a school, tell us also whether it's a negro school or white school.

The Witness: Thus far——

By Mr. Greenberg:

Q. Buchanan is what?

A. Colored.

Q. What about Gage?

A. White.

Q. What about Lafayette?

A. Is white. The Lafayette building is forty-eight years old, insured for \$3,373. Although not the oldest, this is [fol. 196] certainly one of the poorest buildings in Topeka. The comprehensive plan suggested in 1942 by the planning commission recommended that it be abandoned but it still

houses 300 pupils. Small, the auditorium is small, and the playground is small. The kindergarten is fair; books are only fair. There are two fire escapes, but the safety factor is somewhat questionable partly due to the number of children who are housed in the building.

Q. Tell us your findings concerning the McKinley School, Dr. Speer.

A. McKinley is a colored school; it's forty-four years old. It's insured value per available classroom is \$2,477. The building was well constructed. It has wooden floors and stairs, which make it something of a fire hazard. It has one fire escape. Approximately three-fourths of the books were too old to be suitable for school use. The comprehensive plan for the City of Topeka, prepared by the City Commissioner—

Mr. Goodell: If the Court please, we object to this witness telling about some book comprehensive plan. It's outside the scope of the issues in this case; secondly, it's not the best evidence; it's hearsay as far as this witness is concerned.

Mr. Greenberg: If the Court please, may I ask Dr. Speer whether such city plans and city surveys are things which [fol. 197] an educator customarily studies in making an evaluation.

Judge Huxman: What comprehensive plan are you referring to, Doctor?

The Witness: I am referring, Your Honor—

Judge Huxman: Bartholomew plan?

The Witness: I am referring, Your Honor, to the one that was mentioned in court this morning that was prepared jointly by the Board of Education, the City Commissioners, and, I think—

Mr. Goodell: Now, if the Court please, that is this witness' idea that it was prepared jointly.

Judge Huxman: That plan was ruled out. We haven't received or permitted any evidence concerning that plan. I think the witness should refrain from reference to this comprehensive plan.

The Witness: This—the site of the McKinley building is not at all attractive and hardly adequate for school purposes. In other words, we might say it has very poor aesthetic value.

By Mr. Greenberg:

Q. Would you tell us what you found concerning Monroe School?

A. Monroe. Colored building, is twenty-four years old; it's valued at \$9,760. This is, in our judgment, the best of the colored buildings. It's well constructed, has tile floors. [fol. 198] Again, however, many of the books are too old for good school use. The site is rather small, and the building and site are not very attractive.

Q. And tell us about what you found concerning Oakland School, Dr. Speer.

A. The Oakland School is white; it's only one year old. It's insured value per available classroom is \$23,906. It's a beautiful structure. It's about the last word in school buildings; has modern furniture, asphalt tile floors, acoustical ceilings, good lighting, good heating, darkroom for audio-visual aids, office vault, public address system for use of radio programs, music programs, has a beautiful, large combination auditorium-gymnasium very suitable for community gatherings and parent meetings, large dining and social room with a kitchen adjoining; well adapted for community meetings; has a beautiful kindergarten room with new equipment; the books still not ideal but they are very good. All in all, it's an excellent building that should provide for one of the best educational opportunities.

Q. And tell the Court what you found concerning the Parkdale School.

A. The Parkdale, white, is age twenty-seven, value \$8,016. The building appears to have been rather poorly constructed. It has a stucco exterior for the most part. It is [fol. 199] in rather an attractive location with ample playground area. The kindergarten room is quite dull; the books are just fairly good.

Q. And would you do the same concerning the Polk School.

A. The Polk School, for white children, is sixty-four years old; it's the oldest building in Topeka. It's insured value per room is \$2,547. It is the oldest building in Topeka, but it is not, in my judgment, the worst building. It is surprisingly substantial, surprisingly attractive on the inside. Has a nice auditorium, two playrooms in the basement, built

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of native stone; has two fire escapes; the books in the building are very good.

Q. And what did you find concerning the Potwin School?

A. The Potwin School is white, age two years, value per room, \$18,100. It's a beautiful building with very modern features. It has a spacious playground which is surfaced with asphalt. It has a beautiful auditorium, also double playrooms. The books are mostly good, at least dating from the 1930's on, mostly. It has a kitchen, a visual aids room. This building seems to be filled to capacity already although only two years old. It is, all in all, one that should provide an excellent educational opportunity.

Q. And what about the Randolph School, Dr. Speer.

A. The Randolph School, a large school, age twenty-four, [fol. 200] value \$6,947. It's a large building which is reasonably good. The desks are old, but the books are fairly good, the majority of them dating in the 1940's. It has a very attractive kindergarten with a fireplace and good decorations. It has an excellent, spacious playground. It has a beautiful row of trees which highlight the landscaping. Although it's a little old, this building is still capable of providing a very good educational opportunity. It has a small combination auditorium-gymnasium which is not adequate for the entire enrollment.

Q. Would you please tell the Court what you found concerning State Street School.

A. State Street is a white school, age eleven years, insured value per classroom, \$13,880. It's an excellent building, beautifully located, well landscaped; most of the new features, such as a public address system, beautiful auditorium, adequate gymnasium, excellent playground, has a kitchen, library room; the books are fairly good but not in keeping with the building. All in all, the facilities are available to provide a very good educational opportunity, one of the best.

Q. Would you tell the Court what you found concerning Sumner School.

A. The Sumner School is white, age fifteen years, value \$15,936 per room. It's another excellent building; beautiful [fol. 201] auditorium, a large good gymnasium, has its public address system; the books are good; very attractive

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kindergarten. Again, the facilities are available for an excellent educational opportunity.

Q. Would you do the same concerning the Van Buren School.

A. Van Buren is a white school, age forty-one years, value \$6,030 per classroom. Although it's an old building, it has steel stairways which eliminates some fire hazard. It has an auditorium and a playroom; has good pictures and good books. The one fire escape, however, is approached through a window on the second floor which might be locked or hard for children to reach in an emergency. However, the building can still provide a fair educational opportunity.

Q. Would you tell the Court what you found concerning the Washington School.

A. Washington is a colored school, thirty-six years old, valued at \$6,284. It's a fairly good building in a rather unattractive setting. One room seemed to be set aside for books. The books were fair; better than in most of the colored buildings. The faculty here—there was evidence to lead us to believe that the faculty here were doing the best to make the most of their facilities.

Q. Are there other buildings that you did not visit, Dr. Speer, but concerning which you have data.

[fol. 202] A. Yes, there are, I think, eight other buildings that I have this data on.

Q. Could you rapidly go down that list and tell the Court what data you found.

A. Yes, I will very quickly read age first and value second, if I may.

Central Park, white, thirty-nine years old, \$5,160.

Clay, White, twenty-five years old, \$12,750.

Grant, thirteen years old, \$15,336. Grant is a white school.

Lincoln, a white school, thirty-five years old, \$4,610.

Lowman Hill, a white school, forty-eight years old, \$5,220.

Quincy, white building, forty-seven years old, \$4,040.

Quinton Heights, thirty-eight years old, \$3,024.

I might mention here that there is a new building now under construction to be called the Southwest building which, I presume, will be available sometime during the

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coming year and, by our formula, the insured value per classroom should be about \$26,660.

Q. Now, Dr. Speer, you have gone through all the schools [fol. 203] in the City of Topeka, and I would like to ask you some hypothetical questions which I would like you to answer on the basis of your study of the schools in the City of Topeka and on the basis of your knowledge and experience and study as an educator.

I want you to assume the following set of facts, Dr. Speer: That a negro child who lives in Topeka, where there are racially segregated schools, attends the Buchanan School, although if there were not racial segregation in the City of Topeka, because of where he lives, he would otherwise attend the Randolph School, would you say that on the basis of the evidence you have given above and the other factors which I mentioned, that he obtains the same educational opportunity at Buchanan that he would obtain if he attended Randolph?

Mr. Goodell: To which we object as the hypothetical question assumes a fact not proven, and the fact assumes another fact that is contrary to some evidence. The fact it assumes that if the child lived at Randolph and there wasn't racial segregation he would attend Randolph. It assumes that fact. It isn't necessarily so. The child, even if you didn't have segregation, might not prefer to go to Randolph. He might prefer to go to some school where he wasn't outnumbered by fifty to one. Object to the question in the present form because it assumes a hypothetical fact unsupported by any evidence.

Judge Huxman: You may answer, Doctor.

The Witness: The question, as I understand it—

Mr. Greenberg: (To reporter) Would you read it back, please.

(The last preceding question was read by the reporter.)

By Mr. Greenberg:

Q. What is your answer to that question, Dr. Speer?

A. No, I would say he would not get the same educational opportunity for some of the following reasons: First of

all, the Buchanan building is an older building; it's thirty years old; Randolph is twenty-four years old. The insured value per classroom for Buchanan is \$5,623; for Randolph it's \$6,947. To look at some of the details of the buildings, Buchanan has no combined gymnasium-auditorium; Randolph has one that is not completely adequate but it will hold several grades at one time. The furniture—

Mr. Goodell: Pardon me, I want to interpose another objection, that this has no probative force to show denial of equal protection of the law on this sort of a comparison because he is now demonstrating that because—that an inequality exists because some physical plants are newer [fol. 205] and bigger and better than other physical plants. He is comparing, it's true, with a colored plant, but he is also in the other part of his testimony—he has shown that the same disparity exists between many white schools as to the newer school where we have very old schools, very low cost per capita per room, classroom, and also the testimony very obviously shows no school system in the world could have buildings equal because newer buildings necessarily incorporate modern facilities not known when they were built twenty or thirty years ago.

Mr. Greenberg: May I answer that, Your Honor?

Mr. Goodell: I address that to the Court, not you.

Mr. Greenberg: I didn't ask you whether I could answer it.

Judge Huxman: The witness may answer.

The Witness: Proceeding, on the other hand, we might say that the Randolph building has these features, a much more attractive kindergarten room, more spacious playground, much more attractive surroundings which adds to its aesthetic educational value, and I would add, if I may consult my notes a moment here—

Mr. Greenberg: Go ahead.

The Witness: That the books in the Randolph School are better than the books in the Buchanan building, in [fol. 206] my judgment. There are better heating and lighting in the Randolph building, and I think I would add, Your Honor, that most important of all the curriculum in the Randolph building provides a much better educational opportunity than the one in the Buchanan building, be-

cause, in the Randolph building, the colored child would have opportunity to learn to live with, to work with, to cooperate with, white children who are representative of approximately 90% of the population of the society in which he is to live.

By Mr. Greenberg:

Q. Now, Dr. Speer, rather than asking you the same question again, I would like you to answer the same question, comparing the Gage and the Buchanan Schools.

Judge Huxman: Would your answers be substantially the same, based upon substantially the same reasons?

The Witness: Some of the reasons would be the same, Your Honor. However, I believe this particular comparison the difference is greater.

Judge Huxman: Well, would be a difference of degree, otherwise your answer would be the same.

The Witness: Some of the specific details might be different.

Judge Huxman: Does that satisfy you, Mr.—

[fol. 207] Mr. Greenberg: That is all right; that satisfies us, yes.

By Mr. Greenberg:

Q. I would like to ask you the same question concerning a comparison of Sumner and Monroe Schools, Dr. Speer.

A. Sumner and Monroe. Again I would say for some of the same kinds of reasons that the Sumner building would provide a better educational opportunity.

Judge Huxman: May I ask the doctor a question?

Mr. Greenberg: Yes.

Judge Huxman: To be sure I understand his answer, is one of the reasons which is common to all three of these, your reason that they are by segregation denied in all three of these schools the opportunity to mingle and live with the white children, which they would otherwise have and that, to you, is an important factor, is that part of your answer?

The Witness: Yes, Your Honor, that would enter into all of them.

Judge Huxman: I was quite sure that was it, but I wanted to be clear in my own mind that that was a part of your answer in all of these schools.

By Mr. Greenberg:

Q. Dr. Speer, I would like you to make a similar comparison between State and Washington Schools.

[fol. 208] A. The same curriculum reasons, of course, apply and, in addition, we find, as I stated in earlier testimony, that the State Street School is one of the better schools, and it has many features such as the P. A. system and a beautiful auditorium, an excellent playground, a library room, a kitchen that can be used to provide a considerably better educational opportunity than could be provided in the Washington School.

Mr. Greenberg: Your witness.

Judge Huxman: You may cross examine.

Cross-examination.

By Mr. Goodell:

Q. Dr. Speer, if I understand your testimony correctly, boiled down to—as to the physical facts on the comparison of buildings and facilities feature of it, eliminating the racial feature, is it your opinion that any school, white school, that is considerably older and inferior and a wide disparity as to modern facilities, that that child going to such a white school is likewise being denied an equal opportunity of education?

A. It is unequal in another sense, I would say, if I understand your question correctly. Would you mind repeating the crux of it; I am not sure that I understand you.

Q. What I am trying to say is, eliminating the racial feature and restricting your opinion entirely to comparison of plants, facilities and accessories, will you still [fol. 209] say that a child, a white child, who goes to one of these other schools, such as Lafayette, Quinton Heights, Polk and some of these old schools, and Lowman, are

denied equal educational opportunities as against children—as compared to children who live in a territory such as Oakland and Randolph and Potwin and get to go to those new schools.

A. A child might be—might have an inferior educational opportunity in some respects, but he would not have the stigma of segregation, nor be denied the opportunity to mix with the majority group of the population. Also—

Q. I said eliminating that feature of it. Other than that, do you consider that it's an inferior opportunity as far as the white child is concerned so that he is denied an equal opportunity of education, eliminating the racial thing.

A. It might be if all other facilities are equal, but that is an accident of geography.

Q. Well, you made comparisons between some of the best white schools we have here in town to the colored schools, haven't you?

A. Yes, sir.

Q. Now, while we are on that subject, I will ask you to turn to Exhibit "K", which is the Board of Education's record pertaining to the original cost of these buildings [fol. 210] and also, in the same connection—

A. I don't have a copy of that here, sir.

Q. I will step over here and let you see it. What I have marked on my copy here in red are the negro schools; what I have marked in blue pencil are the white schools; you understand?

A. Yes, sir.

Q. Now, I will direct your attention, if the schools that were built about the same time, the white schools, as the colored schools, if this exhibit doesn't show the same—practically—outlay of cost and, in some instances, more money spent for structural, or the school, and land acquisition than there were for white schools that were built at that same period of time.

A. I think that may be possible.

Q. Doesn't the exhibit show that, the records of the Board of Education.

A. Which two buildings do you mean?

Q. Well, compare Quinton Heights, which was built in 1913, at a cost of \$12,640.

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A. With what?

Q. We will get that in a minute, and McKinley, which was built six years earlier at a cost of \$51,000 for the structure.

A. I would say that between 1907 and 1913 building costs might have fluctuated a great deal, and I don't think—[fol. 211] I would not base a comparison on building—on construction cost with that many years intervening. That is why we used insurance costs which are supposed to be current and accurate as prepared by the Board of Education.

Q. Let's compare Lowman Hill, which is a white school built, according to the exhibit, in 1906, with McKinley.

A. May I correct you? It was built in 1901 and an addition in 1906.

Q. All right. Compare that to McKinley School.

A. McKinley School was built in 1907, six years later; again there may have been considerable difference in construction costs over a six-year period. They sometimes change very rapidly to the best cycle and other things.

Q. Let's look at the exhibit on the insurance values; don't you see disparity between the old white schools and the new white schools?

A. That is possible.

Q. On the present insurance table—

Judge Mellott: What is the exhibit on the insurance?

Mr. Goodell: "L".

By Mr. Goodell:

Q. I call your attention specifically to some schools shown on this exhibit and their present insurance values as shown by this exhibit. Quinton Heights has a total [fol. 212] structure insured value of \$14,000, doesn't it?

A. Yes, sir.

Q. Van Buren has an insured value of \$46,800, doesn't it?

A. Yes, sir.

Q. That is a white school. Washington has an insured value of \$64,800, doesn't it?

A. Yes, sir.

Q. Monroe has an insured value of \$112,000, doesn't it?

A. Yes, sir.

Q. So there you have got three white schools, all of which are lower present value than the colored schools, isn't that right?

A. If I may express my view, my basis, you cannot compare building by building on—even on insured cost because some buildings are larger than others. Therefore, the only basis I was able to arrive at was an insured value per available classroom. You have to have some kind of a common yardstick to use on all buildings. For instance, some of those buildings are twice as big as others and, therefore, their value would naturally be proportionately greater.

Q. Do you know of any school system in the United States—not just Topeka—in the United States, that has buildings that are equal, that there isn't great differences based upon when they were built and the needs of the community at the time they were built?

A. That has not—doesn't have great differences as to their value and commodious quarters and characters that are recognized now in modern education and that are applied in modern buildings, that doesn't have great disparities, those types of buildings, in any school system in the United States with buildings built twenty, thirty or forty years ago.

A. I believe there is very likely to be some disparity, may not be great, and may not be great as compared to this group and this group, but between individual buildings, I am sure you would find some disparity if there is more than one building.

Q. You realize that school buildings are built as a community grows up and population trends—where the town grows and which way it grows determines whether buildings are located and newer buildings are added.

A. That is one factor.

Q. Do you know of any way *way* on earth to keep those facilities adequate and at the same time equal in any school system?

A. There are ways that it can be approached.

Q. Well, just tell me how you would approach it.

A. By forming a good cooperative city planning with

the Board of Education and the City Commissioners on [fol. 214] a long-term scale and then following it.

Q. Would you recommend that if we had a building like, say in Topeka, that cost \$112,000 and is now a sound and structural safe colored building, that you tear that down because we happen to have a new building built a year ago that cost a half million dollars; would you recommend that?

A. Not merely for that reason, no.

Q. What other reasons would you have for tearing it down?

A. If I found that throughout the community the colored children's buildings were decidedly inferior to the buildings of the white schools, then I would consider that to be an unequal educational opportunity between the groups.

Q. Well, now, let's talk about that subject. Let's talk about Quinton Heights and Polk Street and Lafayette School and Lowman School, all of which have a physical plant value at the time they were built and at the present time, an insurance value less than any of the four colored schools. Do you think that makes the white children get inferior education than to the colored children going to those schools?

A. The colored children are getting an inferior education, I think, for this reason: That, as I cited in my original testimony, 45% of the white children can go to schools that are newer than the newest colored building; only 14% [fol. 215] of the white children have to go to schools that are older than the oldest colored building, so it's a comparison of 14% against 45%.

Q. Let's get back on the track. I asked you whether or not, using an illustration of four white schools, if they are inferior as to value, both at the time they were built and now, to the colored schools, do you consider that alone makes the white child that is attending those schools, Quinton Heights, Polk, Lowman and Lafayette, receive in and of itself, receive an inferior education.

A. Not necessarily.

Q. Well, then, why do you say that when you talk about that element as causing the colored child—

A. Because—

Q. Wait just a minute until I ask my question, will you please? Why do you say that when you are talking about a colored child who goes to one of the four colored schools and you compare the plant and facilities to some of the modern buildings—school buildings—in the last two or three years.

A. Because, in the first instance, we are assuming—

Judge Mellott: The witness must wait until the question is completely asked. The reporter can't get it down when you both talk at the same time.

(The last preceding question was read by the re-[fol. 216] porter.)

Judge Mellott: Strike out the answer as partially given.

By Mr. Goodell:

Q. Why do you say in such a situation in making the comparison in the case of a negro child going to one of the four negro schools, comparing it to some of the schools built in the Topeka area, in the Topeka school system in the last two or three or four years, such as Randolph, Potwin and Oakland, that that fact alone gives the negro child an inferior educational opportunity, that would not apply in the case of the children going to the white schools that I have previously mentioned in my other question.

A. In the first instance, if I understand you correctly, I was assuming that other things were equal because of the—as we admitted, the faculty preparation is approximately equal, the class size equal, and so forth. But, in the latter instance, other things are not equal primarily because of the difference in the curriculum which is a very important factor.

Q. All right, now, what is present in the case of the Quinton Heights white school, in the curriculum you talk about, that is not present for comparison purposes in any of the four colored schools?

A. Because in Quinton Heights the child has the opportunity to learn his personal adjustments, his social adjust-[fol. 217] ments and his citizenship skills in the presence of a cross-section of the population.

Q. I asked you to eliminate the racial feature entirely and restrict it to physical things alone; that is what I asked you.

The Witness: If the Court will permit, I don't think that we can answer an educational opportunity purely on physical features. There are too many other elements that are also involved.

Q. Mr. Speer, Professor Speer, I probably misunderstood you. I thought—I understood your testimony to be that because of these physical things that in and of itself, ignoring the racial thing, that that constituted an unequal educational opportunity to the negro child because of these modern buildings that he wasn't allowed to go to; is that correct, or not?

A. It is certainly one of the very important things and, if the other factors are equal, and this one is unequal, then there may be an inequality in the total educational opportunity.

Q. Maybe I am so stupid I can't understand you. Did you not say, is it your opinion, that because of physical factors, and I mean by physical factors differences in plant facilities, of some of the white schools and the four negro [fol. 218] schools, that alone, in and of itself, causes you to give an opinion, and it is your opinion that that child, the negro child, because of that alone, doesn't have equal educational opportunity.

A. That is a contributing factor, but I do not consider that of—that alone.

Q. Then you didn't say that alone caused him to have an unequal opportunity.

A. No, but that coupled with other factors did cause him to have an unequal opportunity.

Q. What are the other factors rather than racial factors.

A. Curriculum factor; there is faculty; there is size of classrooms; there is books—

Q. Let's compare some white schools—let's take Quinton Heights, Lowman, Polk and Lafayette again. What is present as to the faculty, comparing that to the faculty of the four negro schools, that is inferior or that is—there is a disparity.

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Mr. Carter: I would like—I think that we have listened to this line of questioning—it seems to us that it is now objectionable. What I apparently gather from the line of examination that is being made is that the—Mr. Goodell is attempting to establish that because there are deprivations of white children that he call off the deprivations of the negro child in segregation. We don't think that is [fol. 219] the issue in the case.

Judge Huxman: This is cross-examination of your expert witness where the latitude is a little greater. You may proceed.

By Mr. Goodell:

Q. Restricting now for this question, I will ask you to compare and point out dissimilarities or disparities between the faculty—one thing alone now—the faculty, that is, the teaching in the four white schools, that is, Quinton, Polk—Quinton Heights, Polk Street, Lowman Hill and Lafayette, to the four negro schools that are in issue in this lawsuit.

A. I can't answer that at the moment, sir. I would have to add up the preparation of the faculties of those four particular schools. I do not have that at hand. I added them up for the entire system and took the entire averages, but I do not have them for those four particular schools.

Q. As far as you know, they are perfectly equal then, is that right?

A. I don't think they could be perfectly equal; that would be impossible.

Judge Huxman: Well, now, that is rather quibbling, of course. Perfect equality you can't find in two teachers any place.

Mr. Goodell: I think so.

The Witness: Yes.

[fol. 220] By Mr. Goodell:

Q. What—is the faculty, then, comparing it to the other factor which you mentioned, curriculum, on the four white schools covered by the illustration and the four negro schools—

A. How does the curriculum compare?

Q. Yes.

A. Between the two schools. As far as course of study is concerned, as far as I know, it is probably about equal but as far as the total curriculum is concerned, and that is the only basis on which I can discuss it, it is not equal.

Q. What do you mean by total curriculum?

A. I mean the total school experience of the school child, what the instructions, what the books are, what the surroundings of the buildings are, what his associations with the other children are.

Q. Well, eliminating that feature, the associations with the other children, which is the racial feature, what are the other part of the curriculum which is any dissimilarity or inferior factors present in the case of the negro schools and the white schools that I have used for illustration.

A. In professional circles we have a term called the great "gestalt" which means the sum is greater—the whole is greater than the sum of the parts and, when we start taking into account only the parts one by one, we destroy [fol. 221] our "gestalt", and we cannot make a wise comparison.

Judge Mellott: What was that word?

The Witness: (Spelling) G-e-s-t-a-l-t.

By Mr. Goodell:

Q. Now you come from Missouri, don't you?

A. I at present live in Missouri, yes, sir.

Q. You have segregated schools there, don't you?

A. We have some segregated schools. On the university campus we have a mixed school.

Q. I am talking about the public school system in the State of Missouri.

A. Yes, sir.

Q. And it is mandatory, isn't that right?

A. I presume in some cases it is.

Q. Have you studied any of the various state statutes over the country which we have had for a half century concerning this segregation of students?

Mr. Carter: Your Honor, I can't see how this—

Mr. Goodell. This is preliminary for another question.

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Judge Huxman: I think that is an improper question. Well, as long as it is preliminary, you may answer whether you have or have not studied these various statutes.

Mr. Goodell: I will withdraw the question.

[fol. 222] By Mr. Goodell:

Q. You know in a great many cities and communities of the United States there are statutes similar to the statutes here in Kansas which we have had for a half century or three-fourths of a century, isn't that right?

A. I presume so.

Q. You know, as a practical man, laws get passed by legislators coming from the various parts of their communities over the state, don't you?

A. Yes, sir.

Judge Huxman: Mr. Goodell, what is the purpose of that question? What value does that have to our problem how laws are passed?

Mr. Goodell: I am getting to that. I can't ask it all at once. I am trying to get from this witness the feature as to whether he thinks elimination of racial segregation, if it's unwanted by the community and is out of step with the thinking of the community which the mere existence of the laws have some indication—

Judge Huxman: I think Dr. Speer has made it quite clear from his evidence—he has to me at least, if I understand it—that segregation, racial segregation, is the prime and controlling factor of the equality of the whole curriculum, and that these physical factors are secondary, and that his testimony, as it registered with me, is that aside from [fol. 223] racial segregation he perhaps would not testify that there was any such inequality in the physical properties as would deny anybody an equal educational opportunity. Do I understand your testimony correctly?

The Witness: If I may say, Your Honor, I think I would sum up this way: That there is, in my opinion, some inequality in physical facilities between the groups in Topeka, but, in addition to that, there is also the difference of segregation itself which affects the school curriculum.

Judge Huxman: Let's see if I can get myself straightened

out. Do you not also agree with what Mr. Goodell is trying to bring out here—you haven't gotten together—that if you put it on that fact, that there is inequality in physical facilities as between the white schools and the colored schools, sometimes the greater facilities are with the colored schools against the older white schools.

The Witness: Yes, Your Honor, but they are not as many in that direction as there are in the other direction in this case.

Judge Huxman: It seems to me we are spending a lot of time on that when that is rather, it seems to me, it would be obvious if you have an older white building [fol. 224] than a colored building that perhaps the physical facilities in the older white building would be poorer than the colored building.

The Witness: Yes, I will agree.

Mr. Goodell: I will try to shorten this up.

By Mr. Goodell:

Q. If I understand you correctly, the basis of your opinion on saying that the mere separation—strike that. It's your opinion, then, that you can't have separate schools in any public school system and have equality, is that right?

A. Yes.

Q. And that is predicated on the—on your philosophy or your theory that merely because the two races are kept apart in the educational process, isn't that right, mere separation causes inequality.

A. That is one of the things which causes inequality, yes, sir.

Q. Yes. Now, assuming, Doctor, that we didn't have separate schools and they were altogether, and you still had a social situation in this community which didn't recognize co-mingling of the races, didn't admit them on free equality, that child would run against those—run up against those things in his practical every-day world, wouldn't he?

[fol. 225] A. I presume so.

Q. Sir?

A. I would think so.

Q. Wouldn't that tend to cause more of a tempest and emotional strain or psychological impact if he got used to going to school with white children than when he went downtown and couldn't eat in a white restaurant, couldn't go to a white hotel and couldn't do this and that, wouldn't that make the impact greater and accentuate that very thing.

Mr. Greenberg: This witness is qualified as an expert in the field of education, and I don't believe has testified or is qualified to testify concerning segregation all over the State of Kansas or elsewhere.

Mr. Goodell: Well, I restrict it to Topeka.

Judge Huxman: I think the Court will sustain the objection. That is purely argumentative. I doubt whether the doctor has qualified himself.

By Mr. Goodell:

Q. Assuming, Doctor, we will restrict this to the educational process, assuming that—that we didn't have segregation, for the purpose of this question, and assuming further we had a negro child going to Potwin or Oakland or Randolph and assuming that the population trend appears in the schoolroom as it does in our city, so that he would be outnumbered from twenty to fifty to one, assuming all that, for the purpose of this question as being true, [fol. 226] wouldn't that cause some inferiority feeling on the part of the colored child when he went to such a school where he was outnumbered twenty to fifty to one and caused some sort of mental disturbance and upset.

A. On which basis would you rather for me to—on theory or on personal observation or experience?

Q. I am talking about theory here.

A. And personal observation and experience.

Q. Yes.

A. Let me first mention the latter one; we have adjoining our campus a demonstration school of 210 students in the elementary grades and mixed in with them are about ten negro children, so they are outnumbered in that proportion, and my observation is, and the reports I receive from my assistants are, that those children are very happy, very

well adjusted, and they are there voluntarily. They don't have to attend.

Mr. Elisha Scott: I object to that.

Judge Huxman: Mr. Scott, are you entered here as an attorney of record?

Mr. Elisha Scott: I am supposed to be.

Judge Huxman: Go ahead.

Mr. Elisha Scott: I object to that because he is invading the rights, and he is answering a question not based upon [fol. 227] the evidence adduced or could be adduced.

Mr. Goodell: You just got here; you wouldn't know.

Mr. Elisha Scott: Yes I do know.

Judge Huxman: Objection will be overruled. You may answer.

The Witness: Shall I repeat the answer?

By Mr. Goodell:

Q. Have you finished?

A. I think, also, on the basis of our knowledge of child behavior that we can say on a short-range basis there may be occasionally, the first time we jump into water we may be a little bit frightened, but, on a long-range basis, we generally are able to work out our adjustments and make a good situation out of it.

Q. Segregation occurs, doesn't it, Doctor, in any school system among the races. I mean by that, children that come from wealthy families co-mingle with children from poor families; they go off into different cliques; that occurs, doesn't it?

A. It occurs sometimes.

Q. Occurs frequently, doesn't it?

A. Well, it all depends on your definition.

Q. And the child that is left out of the swim, so to speak, he feels inferior or second-class, doesn't he?

A. Yes, and I think we should prevent that in all cases [fol. 228] possible.

Q. You wouldn't make a new social order to prevent social strata of society, would you?

Judge Huxman: Just a minute. The Court will sustain an objection to that question.

By Mr. Goodell:

Q. Have you made a survey of any of the students that have gone to our segregated schools, the negro students, and picked them up to see what effect to their education that you call attention to as being inferior, how it's worked out in every-day life.

A. I have talked to a few of them, but I have not made a survey of them.

Q. Have you heard of anybody getting hired or a professional man having a plant or a businessman having a customer based upon what elementary school he went to in the first grade or the second grade or the sixth grade for that matter?

A. Oh, probably not, but probably there are cases where a person is hired or not hired on the basis of the kind of education he received in the first six grades.

Q. You don't know a thing about our community and how the negro child, when he goes through our school system, how he is received in the business world at all, do you?

A. Oh, I have known Topeka for some years. I may have a little knowledge.

[fol. 229] Q. Do you know anything about that?

A. A little, not too much.

Q. What?

A. I don't know too much about it.

Q. Do you know that in the case of the junior high grades and in the senior high grades that they are not segregated?

A. Yes, sir.

Q. Do you think, getting back to the school system and the illustration of where the negro child would go to a school where he would be outnumbered twenty to fifty to one, and he wasn't recognized because of pure majority rule and wasn't elected head of his class or class officers or recognized in the various school activities, that that would have any impact on such a child.

A. Not as much impact as having been denied even to get into the running.

Q. You think if you got in the school and left out entirely he would feel happy about it, would he?

A. What's that again?

Q. You think if the negro child was simply by edict of

law forced into the white school, whether the white school was ready to receive him or not, and however much he was in the minority and however much he would be left out of things, he would still be happy merely because he had found his way into the white school, is that right?

[fol. 230] A. I think on a long-range plan he would be happier than on the other way.

Mr. Goodell: That's all.

Mr. Carter: Your Honor, may we have a five-minute recess?

Judge Huxman: Yes. The court will take a ten-minute recess.

(The court then, at 2:40 o'clock p. m., stood at recess until 2:50 o'clock p. m., at which time court was reconvened and the following further proceedings were had:)

Mr. Goodell: I would like to recall Dr. Speer for two short questions.

Judge Huxman: Dr. Speer, take the witness stand for a question or two further.

HUGH W. SPEER, having been previously sworn, reassumed the stand and testified further as follows:

Cross-examination (continued).

By Mr. Goodell:

Q. Dr. Speer, in giving your opinion here a moment ago as to the comparison based upon library books—library or books in certain of the negro—in the negro schools to certain of the white schools covered by your testimony, did you consider, in forming that opinion, the fact that the Parent Teachers Association in the various school territories contribute personally and raise the money to buy those books, and they are not furnished by the Board of Education.

A. Yes, I have been informed that that is sometimes the case.

Q. Well, how did you segregate which books have been bought by Parent Teachers Association and the books that have been furnished by the Board of Education?

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A. I didn't make that separation. I felt that by neglect the Board of Education permitted an inequality to exist.

Q. Now, did you also—strike that. State whether or not any of the books in any of the libraries or rooms in the schools that you made the investigation concerning books, that at the end of the term the books, some of them, were gone, that is, packed up in boxes.

A. Yes, we understood that, and we also understood that some of the books are regularly kept in the central office of the Board of Education, and we took that into account, knowing that the same—those books are taken out of all the schools and kept in the Board of Education, so that what remained are really the comparable—form the basis for comparison.

Q. So if some of the books were missing, either being packed up or gone, and you didn't know what they were, you are just basing your testimony, your considered opinion [fol. 232] ion, on what you found, is that right?

A. Sir, the books that were gone are the books that circulate among all the buildings in the course of the year, so we assume that those are equal. It's the books that are left in the building that really belong to that building, and it is on that basis that we made our differential.

Q. Were some of them packed up?

A. Some of them packed up, and we looked into the boxes.

Q. Did you take them all out volume by volume and examine them?

A. We did not examine every book in the Topeka school system, but we sampled it in an unbiased way. We sampled a large number of rooms and a large number of buildings and a large number of boxes, but we did not examine every book.

Q. You mean you took a book out here and there from a box and, from that, made up your mind that they were all alike and, consequently, that is the way you got at your opinion.

A. No, sir. We took sampling in a scientific way.

Q. What do you mean scientific way?

A. We took a sample that was representative and large enough to where we could feel confident in it.

Judge Huxman: Is that all?

By Mr. Goodell:

Q. Which books were bought in the various schools that you gave your opinion about—were bought by the Parent [fol. 233] Teachers Association?

A. I don't know just which books. Some, no doubt, were but not a great many. It is not enough to affect the percentage very much.

Q. If you don't know what books they were, some of the books you didn't even examine, you don't know what quantity they are, how do you get at an opinion as to book facilities at the various schools?

A. On this basis, sir, that it is the books in the school that are responsible for the education of the child, and we examined the books in the school and, on that basis, we made our opinion.

Q. So what you are saying, if I understand you right, the books you found and examined showed less books or inferior quality as to date and so forth in the colored schools than the books you found in the white schools, is that right?

A. Yes, sir.

Mr. Goodell: All right.

Judge Huxman: Step down.

JAMES H. BUCHANAN, having been first duly sworn, assumed the stand and testified as follows:

Direct examination.

By Mr. Greenberg:

[fol. 234] Q. Dr. Buchanan, will you tell the Court your full name, please.

A. James H. Buchanan.